

209.571-7

or a pre-major defense acquisition program by a contractor who simultaneously owns a business unit competing (or potentially competing) to perform as—

(1) The prime contractor for the same major defense acquisition program; or

(2) The supplier of a major subsystem or component for the same major defense acquisition program.

(b) The proposed award of a major subsystem by a prime contractor to business units or other affiliates of the same parent corporate entity, particularly the award of a subcontract for software integration or the development of a proprietary software system architecture; and

(c) The performance by, or assistance of, contractors in technical evaluation.

[75 FR 81913, Dec. 29, 2010]

209.571-7 Systems engineering and technical assistance contracts.

(a) Agencies shall obtain advice on systems architecture and systems engineering matters with respect to major defense acquisition programs or pre-major defense acquisition programs from Federally Funded Research and Development Centers or other sources independent of the major defense acquisition program contractor.

(b) *Limitation on Future Contracting.*

(1) Except as provided in paragraph (c) of this subsection, a contract for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program shall prohibit the contractor or any affiliate of the contractor from participating as a contractor or major subcontractor in the development or production of a weapon system under such program.

(2) The requirement in paragraph (b)(1) of this subsection cannot be waived.

(c) *Exception.* (1) The requirement in paragraph (b)(1) of this subsection does not apply if the head of the contracting activity determines that—

(i) An exception is necessary because DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror; and

(ii) Based on the agreed-to resolution strategy, the apparently successful of-

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feror will be able to provide objective and unbiased advice, as required by 209.571-3(a), without a limitation on future participation in development and production.

(2) The authority to make this determination cannot be delegated.

[75 FR 81913, Dec. 29, 2010]

209.571-8 Solicitation provision and contract clause.

(a) Use the provision at 252.209-7008, Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program, if the solicitation includes the clause at 252.209-7009, Organizational Conflict of Interest—Major Defense Acquisition Program; and

(b) Use the clause at 252.209-7009, Organizational Conflict of Interest—Major Defense Acquisition Program, in solicitations and contracts for systems engineering and technical assistance for major defense acquisition programs or pre-major defense acquisition programs.

[75 FR 81913, Dec. 29, 2010]

PART 210—MARKET RESEARCH

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

210.001 Policy.

(a) In addition to the requirements of FAR 10.001(a), agencies shall—

(i) Conduct market research appropriate to the circumstances before—

(A) Soliciting offers for acquisitions that could lead to a consolidation of contract requirements as defined in 207.170-2; or

(B) Issuing a solicitation with tiered evaluation of offers (Section 816 of Public Law 109-163); and

(ii) Use the results of market research to determine—

(A) Whether consolidation of contract requirements is necessary and justified in accordance with §207.170-3; or

(B) Whether the criteria in FAR part 19 are met for setting aside the acquisition for small business or, for a task or

delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract. If the contracting officer cannot determine whether the criteria are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109-163).

(c)(2) In addition to the notification requirements at FAR 10.001(c)(2)(i) and (ii), see 205.205-70 for the bundling notification publication requirement.

[71 FR 53043, Sept. 8, 2006, as amended at 75 FR 40716, ≤July 13, 2010]

PART 211—DESCRIBING AGENCY NEEDS

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211.602 General.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 60 FR 61594, Nov. 30, 1995, unless otherwise noted.

211.002 Policy.

All defense technology and acquisition programs in DoD are subject to the policies and procedures in DoDD 5000.1, The Defense Acquisition System, and DoDI 5000.2, Operation of the Defense Acquisition System.

[71 FR 27641, May 12, 2006]

211.002-70 Contract clause.

Use the clause at 252.211-7000, Acquisition Streamlining, in all

Subpart 211.1—Selecting and Developing Requirements Documents

211.105 Items peculiar to one manufacturer.

Follow the publication requirements at PGI 211.105.

[70 FR 23804, May 5, 2005]

211.106 Purchase descriptions for service contracts.

Agencies shall require that purchase descriptions for service contracts and resulting requirements documents, such as statements of work or performance work statements, include language to provide a clear distinction between Government employees and contractor employees. Agencies shall be guided by the characteristics and descriptive elements of personal-services